FOREIGN POLICY OUTLINES

Brief summaries of U.S. policy on various issues. Not intended to serve as comprehensive U.S. policy statements.

BUREAU OF PUBLIC AFFAIRS DEPARTMENT OF STATE

LAW OF THE SEA November 1973

1. Background: The Third U.N. Conference on the Law of the Sea is scheduled to begin with an organizational session at UN headquarters in New York from December 3-14, 1973. A substantive session is scheduled for Caracas, Venezuela between June 20 and August 29, 1974. Previous Law of the Sea conferences took place in 1958 and 1960, resulting in four fundamental treaties on the oceans, but failing to reach agreement on the breadth of the territorial sea and many other vital issues.

The 1974 conference will be the most comprehensive to date. Representatives from some 150 countries are expected to participate in the negotiation of a new single convention concerning the uses of the world's oceans, which cover over two-thirds of the earth's surface. The questions to be addressed have attained critical importance as a result of three major developments during the 1960's and early 1970's:

- The growing tendency on the part of many countries to extend unilaterally their claims over ocean space (in some cases 200 miles from shore).
- The increasing international concern over the degradation of the marine environment.
- The increasing ability to exploit both the living resources of the oceans and the mineral resources of the seabed.

2. U.S. position: President Nixon outlined the major elements of US law of the sea policy on May 23, 1970. Noting the inadequacy of existing law in the face of contemporary developments, he stressed the need for multilateral action to modernize the law of the sea in order to prevent the growing danger of international conflict over the oceans. As outlined by the President and developed in treaty articles tabled by US delegation to the UN Seabed Committee, the US position encompasses the following major elements:

A. Territorial seas and straits: The US is prepared to recognize a maximum limit of 12 nautical miles as the breadth of the territorial sea. However, a crucial condition of this willingness is the achievement of international agreement on free transit through and over straits used for international navigation, many of which might otherwise be closed by the extension of the territorial sea to 12 nautical miles.

B. Coastal seabed economic area: US proposals would give each coastal state the exclusive right to explore and exploit the seabed resources lying off its coast between 12 nautical miles and an outer boundary to be determined. This right would carry with it certain responsibilities, including conformance with international pollution standards, noninterference with other uses of the ocean (such as

navigation and scientific research), guarantees of the integrity of foreign investment, compulsory dispute settlement, and some international sharing of revenues derived from seabed exploitation.

C. International seabed area: The UN General Assembly has proposed that the oceans beyond the limits of national jurisdiction should be the common heritage of mankind. To implement this principle we have proposed the creation of an international regime, the International Seabed Resource Authority, to license all exploration and exploitation activities in the deep seabed. The revenues accruing to the Authority would be used for international community purposes, particularly for economic assistance to developing countries.

D. Marine pollution: General treaty articles would establish the legal framework for prevention of pollution of the marine environment and provide for setting effective international standards to combat marine pollution.

E. Scientific research: US proposals are designed to ensure maximum freedom of marine research and to provide for access to the results of the research by the states off whose coasts the research is carried out.

F. Fisheries: Coastal states would be given management authority over coastal species and anadromous fish (e.g., salmon), but management of highly migratory species (e.g., tuna) would be left to international bodies. The authority delegated to the coastal states would be subject to international standards to ensure conservation and full utilization. A formula for historic fishing rights would be negotiated by the states concerned.

3. Problems: Major areas of disagreement that must be resolved at the Conference include:

- Nature and extent of coastal economic jurisdiction -- defining the outer boundary of the coastal seabed economic area and determining the nature and extent of coastal-state jurisdiction.

- Nature of the international seabed regime -- organization and powers of the Authority; extent of its discretion to license activities or to participate directly in exploration and exploitation; nature, sources, and distribution of revenues to be shared internationally.

- Fisheries -- accommodation of coastal states and distant-water fishing states interests in fishing rights.

- Straits -- assuring unimpeded transit, subject only to reasonable traffic safety and pollution regulations through and over international straits.

- Vessel-source pollution -- assuring effective international standards to prevent pollution of the marine environment from ships, rather than a variety of potentially conflicting coastal state standards. If coastal state standards rather than international standards were to be the norm more than a majority of all coastal states could become totally "zone-locked" -- that is, potentially losing all access to any ocean on which they face without subjecting their shipping to the jurisdiction of another nation.

REVIEW and OUTLOOK
THE WALL STREET JOURNAL
17 December 1973

Law of the Sea: Enough's Enough

The UN's Law of the Sea Conference ended Friday with delegates from 148 nations only really able to agree on one thing. They'll all get together for 10 weeks in Caracas next summer. After all, if they couldn't do that much the individual delegates would all be out of jobs. And since that seems to be the only common ground, there's always Vienna in 1975.

It's just as well. The U.S. presented its draft treaty three years ago, and we would have been alarmed if at any point the developing nations had rushed to sign it. U.S. policy on Law of the Sea doesn't really serve U.S. interests, and it has always been a comfort to suspect that these negotiations have been doomed to failure from the start.

The conference grew out of a couple of concerns. One, that if more and more coastal nations extended their territorial limits 200 miles into the sea the freedom of the seas would be threatened. Second, that unless there is some kind of global accord to deal with the exploitation of the ocean resources, nations would be going to war over who gets what. There may be more than 100 billion barrels of oil below the outer continental margins of the world's coastal areas and there is almost an unlimited supply of manganese nodules, rich in nickel and copper as well, heaped on the deep ocean bed.

The draft treaty President Nixon put forward in 1970 in no way attempted to maximize U.S. interests. Rather, it evolved out of struggles within the government, with the loudest, best-positioned voices at the Defense and State Departments winning out. Defense is really only concerned with securing the right of the Navy to go anywhere it now can go. State's chief interest, as usual, is in securing that illusive perfect treaty, a document that will bring happiness and peace to mankind. No one worried about U.S. access to resources.

As a result, the U.S. position emphasizes freedom of passage and a global sharing of ocean resources. From a depth of 200 meters out to the end of the continental margin, the coastal state would have supervisory control over the ocean's resources, but would share the revenues derived with the rest of the world. The deep ocean bed and all those nodules would be controlled by an international regime that would decide who is licensed to mine and where they can mine, dividing the wealth through an international revenue-sharing mechanism.

The State Department may have believed this would look like a bonanza to the developing nations, who through sheer numbers have dominated the Law of the Sea parleys. But these countries naturally looked at the U.S. draft treaty as an opening gambit of the world's chief "economic imperialist." As might be expected, their counterproposals would make it economically impossible to exploit the ocean resources, which is what many of them have in mind.

It is an empty exercise. The U.S. Senate would never ratify the U.S. draft treaty, let alone the bizarre schemes kicking around the Law of the Sea Conference. So far as we can tell, the governments of Western Europe, Japan and the Soviet Union have been going along with these negotiations simply to humor the United States and the passionately serious developing nations.

The only nation that is paying any serious penalty for dragging out the conference is the United States. Its companies have the capital and technology to exploit the resources, but hesitate to do so when in a few years some unknown international authority could theoretically wipe them out with taxes and regulations. The Interior Department won't issue oil and gas leases beyond 200 meters, for example, without making them conditional on terms of some future agreement. Nor will most U.S. companies go after those nodules with the political risk, though Howard Hughes is doing so on the sound assumption that the Law of the Sea Conference will either break down or go on forever, from spa to shining spa.

Enough is enough. For the sake of form, the United States may as well send its negotiators to Venezuela and Vienna, though there is much to recommend a clean break. But the important thing is that the U.S. government should free the petroleum and mining industries of any caveats linked to some future treaty, and let them go to work adding to the world's store of available resources.

Will this mean the U.S. Navy will be boxed in? No. Any coastal state that desires to maintain commerce with the rest of the world will have to maintain reasonable rules of passage. Will it mean countries will go to war over who gets those nodules, oil or fish? No more than they do now, or less than they would if some world authority came into being. When was the last time the United Nations settled such a scrap?

The Wall Street Journal, 7 January 1974.

Letters: Ambassador on Sea-Law Talks

Editor, The Wall Street Journal:

Your editorial "Law of the Sea: Enough's Enough" (Dec. 17) on the first session of the Law of the Sea Conference reveals a fundamental misconception of present U.S. policy, and misjudges the prospects for an international agreement serving U.S. interests. It also, in my opinion, is premised on a serious miscalculation of what the oceans would be like if an agreement is not reached.

You assert that no one in the U.S. government has worried about U.S. access to ocean resources. Yet the fact is that such access is a fundamental objective of U.S. policy.

That policy, as articulated in draft treaty articles tabled last summer would give coastal states such as the United States full resource jurisdiction over the petroleum and natural gas of the continental margin. With respect to the precise outer limit of coastal state jurisdiction, there was broad support among the countries participating in the preparatory work for 200 miles, or 200 miles on the outer edge of the continental margin, whichever is further seaward.

During the interim period until agreement has been reached, it will not be the policy of the Department of Interior to condition leasing on the outer continental shelf on the terms of a future agreement. In November the Federal Register published the department's opinion that no changes in current lease forms would be required to insure compliance by the United States with any treaty resulting from the present negotiations.

U.S. proposals also provide for coastal state control and preferential fishing rights for species of fish inhabiting coastal waters or spawning in coastal rivers. (Foreign fishermen would be given access on reasonable terms to the extent the coastal state does not have the capacity to catch up to what conservation limits permit.) Fishing for highly migratory ocean species such as tuna would be governed by agreed international agreement.

With regard to nickel and copper from deep-ocean manganese nodules, U.S. proposals provide for licensing that will be non-discretionary, on a first-come, first served, exclusive-right basis; among qualified ocean miners certified as technically and financially competent by a sponsoring country, and with appropriate measures to prevent staking out vast areas without working them. This is a far cry from an international organization that would have discretionary authority to decide who is allowed to mine and where they can mine. Moreover, U.S. representatives have consistently and strongly opposed giving an international authority the effective power to restrict access through imposing price or production controls.

These are hardly the policies or proposals of a government unconcerned with protecting its resource interests in the oceans. However, it is U.S. policy to achieve its resource objectives, not by unilateral action, but rather by a generally accepted international agreement. Such an agreement would protect other important United States interests that might be sacrificed by a unilateral approach. Thus, for example, it would also provide for free transit through international straits and, in the area of coastal state resource jurisdiction, for freedom of navigation, protection of the ocean environment and the right to conduct scientific research.

Nor is the avoidance of conflict through building more effective international law and institutions merely an international lawyers' idealism. Nations have gone to war over transit through international straits. Fisheries disputes have poisoned normally friendly relations with our neighbors to the South, and the recent "cod war" between Iceland and the United Kingdom has been a matter of serious concern not only to those countries but also to their friends and allies.

In attempting to achieve all of these objectives, the U.S. has sought a treaty giving coastal states broad resource management jurisdiction in a broad area beyond the territorial sea, but which would also provide express protection for other uses of the area and the marine environment. Disputes would be settled through agreed compulsory procedures. Revenue sharing with the international community in respect of non-renewable resources has also been supported by the United States, not alone for reasons of equitable sharing with geographically disadvantaged areas, but also as a practical means of achieving general agreement.

In the deep seabed, similarly, the U.S. has proposed treaty articles providing for resource development while protecting other uses and the marine environment, with disputes settled by compulsory process. While on the one hand providing for sharing of benefits with the international community, these articles would also give deep-sea miners the security of tenure and protection from interference that they could not achieve in reliance on the freedom of the seas right to exploit.

Finally, a word as to your skepticism regarding the prospects of securing a treaty that "will bring happiness and peace to mankind" or settle a "scrap" over navigational rights or resources. No one who has been personally involved in negotiating with some 150 sovereign nations to achieve a comprehensive multilateral treaty affecting hard political, economic, military and other national interests could minimize the inherent difficulties. However, by the same token we should not minimize the threat that failure to reach agreement poses not only for our nonresource interests but for certain resource interests, such as the ocean transportation of petroleum and hard minerals.

The choice is not between U.S. freedom to exploit on the one hand and a give-away on the other, but between an agreed international solution protecting our interests and the partition of a large part of the oceans by coastal states with no agreed rules for the area beyond. There is at the very least a common general interest in minimum rules of order which can, as the International Civil Aviation Organization has done in the skies, provide ground rules under which competition [illegible] from which no one will emerge the winner.

To be sure, a successful negotiation must be a two-way street. As you quite properly point out, the developing countries are by their sheer weight of numbers in a position to dominate the conference. But the object of the negotiation is not the adoption by the conference of a treaty text by the developing countries over the opposition of the maritime and developed countries, but rather a generally acceptable treaty that can be ratified by most states, including the principal maritime and developed countries.

Fortunately, the responsible developing country leaders of the conference—including the highly qualified representatives of Sri Lanka, the Cameroons and Venezuela, elected by the just-ended organizational session as chairman of the conference and chairmen of two main committees—are well aware of this fundamental limitation on majority rule. If they will work for reasonable accommodation of developed and maritime country interests and avoid a self-defeating tyranny of the majority, our hard interests no less than "a decent respect for the opinions of mankind" require that we, for our part, make a maximum effort to achieve a generally acceptable negotiated solution.

As to the risk of protracted delay in the negotiations, U.S. representatives have made it abundantly clear that U.S. policy is predicated on completion of the conference's work on schedule—preferably next summer but in any event by 1975 at the latest.

AMBASSADOR JOHN R. STEVENSON
Special Representative of the President for the Law of the Sea Conference
New York